

EXAMPLE 3. Assume the same factual circumstances as exist in the previous example except that Mr. Jones has driven from Jasper County to Smith's Furniture Showroom in a pickup truck and the furniture which Mr. Jones has contracted to buy is transferred onto his truck at the Smith's Furniture Showroom loading ramp. In this example, "delivery," and thus the sale of the furniture, has taken place in Polk County because that is where the seller transferred physical possession of the furniture to the buyer. Since delivery occurred in Polk County, Polk County local option sales tax would be due upon the gross receipts of the sale.

EXAMPLE 4. Again, assume that the whole of Polk County has enacted a local option sales tax. Again, assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House transports the furniture in its own truck from Newton to Ms. Wilson's home in Des Moines. "Delivery" of the furniture has occurred at Ms. Wilson's residence in Polk County because that is where physical possession of the furniture passed from the seller to the buyer. Since delivery has occurred within Polk County, the sale has occurred there, and the gross receipts of the sale are subject to Polk County's local option sales tax. Jackson's Furniture House is obligated to collect the Polk County local option sales tax and to remit that tax to the department of revenue and finance.

EXAMPLE 5. Assume the same circumstances as in Example 4 except that Ms. Wilson has driven to Jackson's Furniture House in Newton in a pickup truck. The furniture is loaded into her pickup truck from the Jackson's Furniture House loading dock. In this situation delivery has occurred at the seller's loading dock outside Polk County; therefore, no obligation to pay Polk County local option sales tax exists with regard to the gross receipts of the sale.

107.3(2) *Taxation of sales of tangible personal property moved by carrier with and without the use of "F.O.B." or a similar term.*

a. Ordinarily, property "sold" in a local option sales tax jurisdiction is subject to that jurisdiction's tax. Property moved into or out of a local option sales tax jurisdiction by common carrier is "sold" when the seller transfers physical possession of the property to a carrier for shipment to a buyer unless the buyer and seller indicate their intent that the sale will occur elsewhere by use of the term F.O.B. or of a phrase similar to F.O.B. See Iowa Code section 554.2504. Use of an F.O.B. point located at a place other than that where a seller transfers possession of goods to a carrier usually indicates that the buyer and seller have agreed that sale of the goods will occur at the F.O.B. point. See *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). In the following examples, assume that Dubuque County has enacted a local option sales tax and Polk County has not.

EXAMPLE A. Assume that Company A is located in Dubuque County and Customer B is located in Des Moines, Iowa, in Polk County. Customer B orders a load of office furniture from Company A. A and B agree that A will secure a common carrier to transport the office furniture to B. A secures the services of Dubuque Cartage Co., which takes possession of the furniture in Dubuque, Iowa, and transports it to Des Moines. There is no mention of the term F.O.B. or any other indication of a delivery point in the contract of sale between A and B. In this case, sale of the furniture was in Dubuque County because that is where the seller of the furniture surrendered physical possession of it to the carrier. A is obligated to collect from B the local option sales tax imposed by Dubuque County.

EXAMPLE B. Assume the same facts as in Example A except that under the terms of the contract of sale delivery of the office furniture is "F.O.B. Des Moines." In this case, sale of the office furniture has occurred in Des Moines in Polk County and not in Dubuque County because the buyer and seller have, with the use of the term "F.O.B. Des Moines," agreed that the sale will take place there. Because of this, A cannot collect from B local option sales tax imposed by Dubuque County.

EXAMPLE C. Mr. Jones, a resident of Polk County, drives to Smith's Furniture Showroom located in Dubuque County to buy some furniture. There Mr. Jones enters into a contract to purchase furniture. Delivery of the furniture is to be "F.O.B. Dubuque." Smith's Furniture Showroom transfers the furniture to a common carrier in Dubuque who transports the furniture to Mr. Jones in Polk County. In this example, sale of the furniture has occurred in Dubuque County because Mr. Jones and Smith's Furniture Showroom have agreed with the use of the term "F.O.B. Dubuque" that the sale will occur there. Because of this, the sale of the furniture is subject to Dubuque County's local option tax.

b. Taxation of property imported into a local option sales tax jurisdiction by a carrier. In the examples below (except for Example E), assume that the whole of Dubuque County, Iowa, has imposed a local option sales tax and that no portion of Polk County has imposed this tax. Further assume, unless otherwise noted, that any seller has the contacts (described in rule 107.8(422B)) with Dubuque County necessary for the county to require the seller to collect its local option sales tax.

EXAMPLE A. Company A is located in Dubuque County. The company orders a load of office furniture from Seller B located in Chicago, Illinois. Under the contract of sale, it is the obligation of B to place the furniture upon a carrier for transport to A. Chicago Transport picks up the furniture at B's loading dock in Chicago. Under these circumstances, sale of the furniture took place when B transferred possession of the furniture to Chicago Transport. Since sale of the furniture occurred in Illinois, the sale of the furniture is not subject to the Dubuque County local option sales tax.

EXAMPLE B. Assume the same facts as in Example A except that the contract for sale of the furniture between A and B calls for delivery of the furniture "F.O.B. Dubuque County." In this case, with the F.O.B. provision, the parties have agreed that sale of the furniture will occur in Dubuque County, Iowa. Thus, B is obligated to collect Dubuque County local option sales tax from A.

EXAMPLE C. Assume, again, that Company A is located in Dubuque County. However, for the purposes of this example, assume that Company B is located in Des Moines in Polk County, Iowa. A orders office furniture from B; shipment to Dubuque, Iowa, is by carrier with no mention of an F.O.B. point or any other indication of a delivery point in the contract between A and B for the sale of the furniture. In this case, sale occurred in Polk County when B placed the furniture in the hands of the carrier. B cannot collect Dubuque County local option sales tax from A.

EXAMPLE D. Assume the facts are as stated in Example C except that the contract between A and B specifies that delivery of the furniture shall be "F.O.B. Dubuque, Iowa." In this case, B is obligated to collect Dubuque County local option sales tax.

EXAMPLE E. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture. Jackson's Furniture House delivers the furniture to a common carrier for shipment F.O.B. Ms. Wilson's home in Polk County. Since delivery (by virtue of the F.O.B. point) is in Polk County, that jurisdiction's local option tax is imposed on the sale.

c. Taxation of exports from a jurisdiction imposing Iowa local option sales tax. Sales of property which a seller transfers to a carrier for subsequent shipment to a point outside Iowa are not subject to Iowa local option sales tax. This exemption does not apply if the property is subsequently returned to a point anywhere within Iowa (not only within the jurisdiction imposing the local option sales tax), unless the return is solely in the course of interstate commerce or transportation; nor does the exemption apply if the buyer or the buyer's agent other than the carrier takes physical possession of the property within the jurisdiction imposing the local option sales tax. For additional material relating to this exemption see rule 701—17.8(422). For the purposes of this paragraph "c," assume that the whole of Dubuque County imposes a local option sales tax, that Company B sells furniture and is located in Dubuque, Iowa, and that Company A is located outside Dubuque, Iowa.

EXAMPLE A. Company A is located in Chicago, Illinois. The company orders a load of office furniture from Company B. Under the contract for sale, transport of the furniture from Dubuque County to Chicago, Illinois, is by carrier with no F.O.B. point or other indication of a delivery point mentioned. Sale of the furniture occurs in Dubuque County because that is the point at which the seller transferred the furniture to the carrier transporting it. However, that sale is exempt from Dubuque County local option sales tax because Company B transferred the furniture to the carrier for shipment to a point outside Iowa (Chicago, Illinois) and the furniture was subsequently used there.

EXAMPLE B. Assume the same facts as in Example A except that Company A's purchasing agent comes to Dubuque County, purchases the furniture there, takes possession of the furniture in Dubuque County and then arranges for a carrier to transport the furniture from Dubuque County to Chicago, Illinois. In this case, the exemption is not applicable and local option sales tax applies since the buyer (Company A) took possession of the furniture in Dubuque County prior to transferring the furniture to the carrier.

107.3(3) *Place of sale of tangible personal property in various special situations.*

a. The place of sale for sales from vending machines is the location of each individual vending machine. This is the point at which the property is delivered to the consumer.

b. The usual place of sales by an itinerant merchant or peddler or by a salesperson having a route is the customer's home, business establishment, or any other point at which the itinerant peddler meets with a customer and solicits an order or completes a contract for sale. The point where the property which is the subject of the contract of sale is delivered is the point which determines if the local option sales tax is imposed.

EXAMPLE. A Super Sweep vacuum cleaner salesperson has a sales route which takes in most of Polk County, Iowa. Assume that local option sales tax is imposed only within the corporate boundaries of Polk City, Polk County. The salesperson travels to Polk City and enters into contracts for sales of vacuum cleaners to persons A, B, and C. Under the contract for sale with person A, the vacuum cleaner is immediately delivered from the salesperson's truck to person A. Under the contract with person B, the vacuum cleaner will be delivered to that person's home in Polk City at a later date. Under the contract with person C, the vacuum cleaner will be delivered, at a future date, to the home of that person's mother in Des Moines. The gross receipts from the sales to persons A and B would be subject to local option sales tax, but not the gross receipts from the sale to person C.

c. If a person who purchases items for resale or processing withdraws those items from inventory or from a stock of materials held for processing, the gross receipts from the sales of such items are subject to local option sales tax if they are withdrawn within the area of a county in which the local option tax is imposed, regardless of where these items were purchased.

EXAMPLE. Assume that the whole of Polk County has a local option sales tax and Jasper County does not. Ms. Carver's home and furniture store are located in Polk County. In Jasper County she purchases five unfinished rocking chairs and the stain and varnish to finish them for sale. She gives the Jasper County retailer exemption certificates stating that the rockers are purchased for resale and the stain and varnish for use in processing. After returning to Polk County Ms. Carver finishes one rocking chair, and instead of selling it, uses it in her own home. Polk County local option sales tax is due upon the value of the rocker, stain, and varnish withdrawn and used.

107.3(4) *Sales of tangible personal property to contractors, contractor-retailers, and the use of property by the manufacturer as building material.*

a. Owners, contractors, subcontractors, or builders purchasing building materials, supplies, and equipment for the erection of buildings, or the alteration, repair, or improvement of real property are liable for payment of local option sales tax if they take delivery of any material, supplies, or equipment in that portion of a county in which the tax is imposed. Neither the place where the parties contract for sale, nor the place where the materials, supplies or equipment are stored or used is of importance in determining liability for the tax.

As of May 4, 1988, construction contractors may apply for refund of additional local option sales or service tax paid as a result of the imposition of or an increase in the rate of local option tax if the following circumstances exist:

(1) The additional tax was paid upon tangible personal property incorporated into an improvement to real estate in fulfillment of a written construction contract fully executed prior to the date local option sales tax is imposed or its rate increased, and

(2) The contractor has paid the full amount of both state and local option sales tax due to the department or to a retailer, and

(3) The claim is filed on forms provided by the department within six months of the date on which the contractor has paid the tax.

See rule 701—19.2(422,423) for a description of a similar right of refund applicable to state sales tax. The rule contains several examples useful in understanding this right of refund for local option tax paid. This local option tax right of refund is not applicable to equipment transferred under a mixed construction contract. See rule 701—19.9(422,423) for a description of a mixed construction contract and rule 701—19.10(422,423) for a description of “equipment.”

b. In the case of contractors, subcontractors, or builders who are also retailers (see rule 701—19.4(422,423) for a description of these persons) local option sales tax may be imposed by a county in which those persons withdraw building materials, supplies, and equipment from inventory for construction purposes or in which the property is delivered to users or consumers who have purchased it.

c. The use within any county of tangible personal property by that property’s manufacturer, as building materials, supplies, or equipment in the performance of a construction contract, or for any purpose except for resale or processing is a sale at retail within the county by the manufacturer. The local option sales tax is computed upon the cost for the manufacturer of the fabrication or production of the materials, supplies, or equipment.

701—107.4(422B) Transactions subject to and excluded from local option service tax.

107.4(1) Local option service tax is imposed upon any enumerated service if the service is rendered, furnished, or performed within the area of a county where that tax is imposed. If only the product or result of a service is used within such an area, no local option service tax may be imposed upon the gross receipts of that service. For the purposes of Examples 1, 2, and 3 in this subrule, assume that a local option service tax is imposed within all of Polk County and that no such tax is imposed within Jasper County.

EXAMPLE 1. Boat repair is a taxable, enumerated service. George, a resident of Polk County, takes his boat to Jasper County to be repaired by Bob. Completely within the boundaries of Jasper County, Bob renders the enumerated service of boat repair. Bob then returns the boat to George’s home in Polk County. No tax is due upon Bob’s charges for the repair. The entire service of boat repair was rendered in Jasper County where there is no local option tax. Even if George and Bob had entered into a contract for the repair of the boat within Polk County, this transaction would not be subject to Polk County’s local option service tax. Rendering or furnishing of the service, not entry into a binding contract for performance of the service, is the taxable event for the purpose of local option service tax.

EXAMPLE 2. Mr. Jolson is a contractor-retailer who performs roof repair services and also has a store where he sells roofing materials. The store is located in Jasper County. Roof repair is a taxable service. Mr. Keller’s home is located in Polk County. At the store in Jasper County, Mr. Keller and Mr. Jolson contract for repair of Mr. Keller’s roof. Mr. Jolson then enters Polk County, repairs the roof on Mr. Keller’s home, and returns to Jasper County. The gross receipts from this roof repair would be subject to Polk County local option service tax regardless of where Mr. Keller and Mr. Jolson entered into the contract for repair of the roof.

EXAMPLE 3. “Machine repair of all kinds” is a taxable enumerated service. Ms. Robinson lives in Jasper County. Ms. Beatty owns a shop which repairs refrigerators. Ms. Robinson’s refrigerator breaks down. She calls Ms. Beatty, who drives her truck to Ms. Robinson’s home in Jasper County. If Ms. Beatty repairs the refrigerator at Ms. Robinson’s home in Jasper County, the repair is not subject to Polk County local option service tax. If Ms. Beatty placed Ms. Robinson’s refrigerator on the truck, took it to her shop in Polk County, repaired it there and then took the refrigerator back to Ms. Robinson’s home, the service would be subject to Polk County local option service tax. In the first instance, the service was performed within Jasper County; in the second instance, it was performed within Polk County.

EXAMPLE 4. As of July 1, 1985, “water softening” is a taxable enumerated service. For the purposes of this example, assume that a local option service tax has been imposed in Polk City, Polk County, but nowhere else within Polk County. Katz Water Softening Service has customers in Des Moines, Polk City, and the unincorporated areas of Polk County. Assuming that water softening service is performed where a customer’s water softener is located, services rendered to customers within Polk City would be taxable. Services rendered to customers in Des Moines and the unincorporated areas of Polk County would not be taxable. The location of Katz’s office would not be material in determining whether service for a particular customer is taxable or not.

107.4(2) Reserved.

701—107.5(422B) Single contracts for taxable services performed partly within and partly outside of an area of a county imposing the local option service tax.

107.5(1) If a contract for a taxable service is substantially performed partly within and partly without the areas of a county imposing a local option service tax, it will be presumed that all of the contract is performed within the area of the county imposing the tax unless that portion of the service not subject to tax is separately stated, separately billed, and is reasonable in amount. For purposes of the examples in this subrule, assume that the whole of Polk County imposes a local option service tax, but Jasper County and Boone County do not.

EXAMPLE 1. “Painting” is a taxable enumerated service. Mrs. Pauley owns three houses, one each in Polk, Jasper, and Boone Counties. Pelz Painting Service contracts with Mrs. Pauley to paint all three houses for \$6,000. The contract specifically states that \$2,000 of this amount is to be paid for painting the Polk County house. The houses are all approximately equal in size. Since the amount paid for painting the Polk County house is separately stated, separately itemized, and reasonable in amount, Polk County local option sales tax is due upon the \$2,000 amount only.

EXAMPLE 2. “Tangible personal property rental” is a taxable enumerated service. Assume that Kim’s Tree Trimming Company rents a machine from Bob’s Rent-All. The rental contract states that a machine will be rented for three months for \$6,000 and that \$5,500 of this amount is paid for rental of the machine in Jasper County and \$500 of this amount for rental of the machine for use in Polk County. After investigation, it is learned that during a three-month period of the rental contract the machine was used for one week in Jasper County and for two months, three weeks and two days in Polk County. The amount paid for use of the machine in Polk County is separately stated and separately itemized; however, it is not reasonable in amount. Local option sales tax would be due on some greater amount than \$500.

EXAMPLE 3. Sam Shovel runs a detective agency. He is hired by Mrs. Lane to conduct an investigation. Over the course of a month Mr. Shovel conducts the investigation partly in Polk, partly in Jasper, and partly in Boone County. The investigation involves travel, examination of documents, surveillance, interviews, and conducting chemical tests on various pieces of material. It is virtually impossible to fairly apportion the amounts of the final bill which are attributable to Polk, Jasper, and Boone Counties, respectively. Unless Sam Shovel can prove that the amount of his activity attributable to Polk County is inconsequential or insubstantial, the entire amount of his final bill to Mrs. Lane is subject to Polk County local option service tax.

107.5(2) Reserved.

701—107.6(422B) Motor vehicle, recreational vehicle, and recreational boat rental subject to local option service tax. The principles used to determine whether motor vehicle, recreational vehicle, and recreational boat rental are subject to Iowa tax are set out in rule 701—26.68(422). Basic principles which determine whether rentals are or are not subject to Iowa sales tax can be used to determine if the rentals are subject to a local option service tax. For example, a short-term rental of a vehicle has occurred within a county imposing a local option sales tax when, pursuant to a rental contract, possession of a vehicle is transferred to a customer. The tax is collectible when any lump sum or periodic payment is due under the rental agreement and paid within the local option county. Transfer of possession of the vehicle must have occurred in the county imposing the local option tax; a contract for rental need not have been executed there.

EXAMPLE 1. Assume that the whole of Polk County has a local option service tax. Customer A signs a rental contract with and takes possession of a rental car from an office of a rental agency located in Des Moines. Thereafter, A drives the car from Des Moines to Dubuque, Iowa, and back. In Des Moines, the rental agency collects gross receipts from the rental of \$100. Such gross receipts would be subject to Polk County local option sales tax.

EXAMPLE 2. Assume the same facts as in Example 1 except that customer B drives the automobile to Dubuque, Iowa, where no local option tax is imposed and drops it off at a rental agency office there. Also in Dubuque, the customer pays a total charge for the rental of \$50. No Polk County local option service tax is due. Transfer of possession occurred in Polk County, but payment for the rental did not.

EXAMPLE 3. Assume the same facts as in Examples 1 and 2, except that before taking possession of the vehicle in Des Moines, customer A pays the rental agency a \$25 deposit. Also, rental of the vehicle is on a mileage and per-day basis. Customer A drives the vehicle to Dubuque, Iowa. There it is discovered that the mileage and per day charges add up to \$50. Customer A pays the rental agency an additional \$25 in Dubuque which has no local option tax. Polk County local option service tax is due upon the \$25 deposit paid in Des Moines, but not upon the \$25 paid in Dubuque. Only the payment made under the lease in Des Moines is subject to Polk County local option tax.

EXAMPLE 4. Assume the same taxation situation as in Example 1. Customer A rents a car in Dubuque, Iowa, which has no local option tax and drives it to Des Moines which has a local option tax. In Des Moines, A pays \$50 for the use of the car. Since transfer of possession of the vehicle did not take place in Polk County, the leasing transaction is not subject to local option service tax. Payment under the lease alone, within a county, does not allow imposition of that county's local option sales tax.

701—107.7(422B) Special rules regarding utility payments. Delivery of gas and water occurs and the services of electricity, heat, communication, and cable television are rendered, furnished, or performed at the address of the subscriber who is billed for the purchase of this property or services. If a telephone subscriber with an address in a local option service tax county uses a telephone credit card within Iowa but outside that county to make an intrastate telephone call, billings to the subscriber's number within the local option service tax county are subject to local option tax.

EXAMPLE. Assume the whole of Polk County, but no other county in Iowa, has a local option service tax. Mrs. Adams lives in Polk County and has a telephone credit card. While staying at a Fort Dodge hotel, Mrs. Adams uses a telephone credit card to call a number in Cedar Rapids. The charge for this use is billed to Mrs. Adams' number in Polk County. The amount of the charge is subject to Polk County local option service tax.

701—107.8(423B) Contacts with county necessary to impose collection obligation upon a retailer.

107.8(1) Nexus requirements for retailers prior to July 1, 1999, and after June 30, 2005. Before any retailer can be required to collect the local option sales or service tax, certain minimal connections must exist between the county imposing the tax and the retailer. These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities for which the obligation to collect local option sales tax can be imposed upon a retailer. *Quill Corporation v. North Dakota*, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa that does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; *Quill*, *supra*. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer. A retailer that sells to a purchaser that possesses a valid direct pay permit issued by the department need not collect local option sales or service tax from the purchaser. Instead, the purchaser must remit tax directly to the department. However, a retailer should obtain a valid exemption certificate from the purchaser for the tax not collected. For further details regarding direct pay permits see rule 701—12.3(422) and for further details regarding exemption certificates see rule 701—15.3(422,423).

EXAMPLE A. Assume that Dubuque County has a local option tax and Polk County does not. Customer A is located in Dubuque County and Company B in Polk County. A buys office furniture from B with delivery of the furniture to be by common carrier "F.O.B. Dubuque, Iowa." Company B has no employees or property in Dubuque County, solicits no business there, and does not engage in any other activities purposefully directed toward Dubuque County. Thus, Company B engages in no purposefully directed activities in Dubuque County which could be used to require B to collect Dubuque County local option sales tax. In this case, even though sale of the furniture took place in Dubuque County (see rule 107.3(422B)) B cannot be required to collect local option sales tax from A.

EXAMPLE B. Assume that the whole of Polk County has enacted a local option sales tax. Assume that Jasper County, in which the city of Newton is located, has not. Ms. Wilson, a resident of Polk County, drives to Jackson's Furniture House in Newton to purchase some furniture. There Ms. Wilson signs a contract to purchase furniture with delivery "F.O.B. Des Moines, Polk County." Jackson's Furniture House transfers the furniture to a common carrier who transports it to Ms. Wilson in Polk County. Unlike the retailer in Example A above, Jackson's Furniture House actively solicits business in Polk County by way of television and newspaper advertising. It also transports some furniture to Polk County customers in its own trucks, and its employees at times enter Polk County to repair furniture previously sold to Polk County residents. Jackson's Furniture House is obviously engaged in purposefully directed activities toward Polk County (some of the activities involving its physical presence there and some not), and by virtue of those activities is obligated to collect Polk County's local option sales tax.

EXAMPLE C. Assume the same facts as in Example B immediately above except assume that Jackson's Furniture House engages continuously and intentionally in soliciting business in Polk County by way of television and newspaper advertising, but has no "physical presence" in Polk County. Jackson's Furniture House has no employees delivering or repairing furniture in Polk County, and no property in that jurisdiction; for example, no trucks or furniture repair tools. Jackson's Furniture House is still engaged in "purposeful activity" in Polk County consisting of a continuous and widespread solicitation of business which is of such a nature that this activity requires it to collect local option tax on the gross receipts from its sales there.

EXAMPLE D. For the purposes of understanding this example, assume that the whole of Polk County has enacted a local option sales tax. Don's Mail Order House has offices and a warehouse in Kansas City, Missouri. Don's Mail Order House continuously solicits business in Polk County by way of advertising there on local television and radio and by sending fliers and catalogs to Polk County residents through the mails. However, Don's Mail Order House has no physical presence anywhere in Polk County. It sends no representatives into Polk County for any purpose, owns no property there, and has no independent contractors performing activities on its behalf in Polk County. So, as a result of its solicitations which are purposefully directed at the Polk County market, the due process clause of the Fourteenth Amendment of the United States Constitution does not prohibit Polk County from requiring Don's Mail Order House to collect its tax. However, since Don's Mail Order House is an out-of-state retailer (in contrast to the retailer described in Example C above) with no physical presence in Polk County, the commerce clause of the United States Constitution prevents the county from requiring that Don's Mail Order House collect its local option tax. Under the facts as stated in this example, it would be unconstitutional to require Don's Mail Order House to collect Polk County's local option sales tax.

EXAMPLE E. Assume the existence of the same facts as in Example D except that Don's Mail Order House has a representative with an office located in Polk County whose job it is to solicit and develop business for Don's Mail Order House in the state of Iowa. Because of that representative's presence in Polk County, the commerce clause of the United States Constitution no longer prohibits Polk County from requiring Don's Mail Order House to collect its local option sales tax.

The "connections" with a county described in this rule are not to be confused with the concepts of "sale" and "delivery" mentioned in rule 107.3(422B) above. A retailer may have connections with a county imposing a local option sales tax significant to the point that the county can, constitutionally, require the retailer to collect its tax if the retailer sells goods or performs taxable services within the county. However, if the retailer neither sells goods nor performs services within that county, the retailer cannot be forced to collect a tax there. Conversely, if a retailer delivers (and thus sells) goods in a county imposing a local option sales tax, but does not have the connections described in this rule with that county, then the retailer cannot be made to collect that county's local option tax even if it is making sales of goods there. It is only very rarely, if ever, that a retailer would be performing services within a county but would not have the connections with that county necessary to require the retailer to collect its tax.

107.8(2) *Nexus requirements for retailers effective from July 1, 1999, through and including June 30, 2005.* Effective from July 1, 1999, through and including June 30, 2005, to be obligated to collect a local option tax imposed by a jurisdiction, a retailer must have physical presence within that local option jurisdiction and “delivery,” as defined in rule 107.3(422B), must occur within the jurisdiction. A retailer is considered to have physical presence within a local option tax jurisdiction if the retailer has, among other things, an employee or a representative or a site owned, leased or rented within the jurisdiction. For additional information, see the definition of “retailer” as provided in 2003 Iowa Code sections 422.42(13) and 423.1(8) and the definition of “retailer” set out in 2005 Iowa Code section 423.1(42). See rule 701—30.1(423) for a list of other activities which will create nexus for local option tax purposes.

Rules 701—107.1(422B) to 701—107.8(423B) are intended to implement Iowa Code section 422.53 and 2005 Iowa Code Supplement chapter 423B.

701—107.9(423B,423E) **Sales not subject to local option tax, including transactions subject to Iowa use tax.** The local option sales and service tax is imposed upon the same basis as the Iowa state sales and service tax, with six exceptions:

1. The sales price from the sale of or service of providing motor fuel or special fuel as defined under Iowa Code chapter 452A is subject to local option tax. However, the sales price from the sale or service of these types of fuels is exempt from local option tax if all of the following criteria are met:

- The motor or special fuel must be consumed by a motor vehicle for highway use, or used in watercraft or aircraft;
- Fuel tax must have been paid on the transaction; and
- A refund has not been or will not be allowed.

2. For taxes imposed prior to July 1, 2005, the sales price from the rental of rooms, apartments, or other lodging which was taxed under Iowa Code chapter 422A during the period in which the hotel and motel tax was imposed under that chapter shall be exempt from local option sales tax. As of July 1, 2005, the sales price of lodging is no longer subject to the sales tax imposed by Iowa Code chapter 423; thus, the sales price of lodging is not subject to the local option sales tax. Also, as of July 1, 2005, Iowa Code chapter 422A is repealed. See 701—Chapter 241 for a description of the new state-imposed tax on lodging; see 701—Chapters 103, 104, and 105 for a description of the new local option hotel and motel tax.

3. The sales price from the sale of natural gas or electricity in a city or county is exempt from tax if the sales price is subject to a franchise or user fee during the period the franchise or user fee is imposed.

4. A local taxing jurisdiction is prohibited from taxing the sales price from a pay television service consisting of a direct-to-home satellite service. Section 602 of the federal government’s Telecommunications Act of 1996 defines a “direct-to-home satellite service” as “only programming transmitted or broadcast by satellite directly to the subscribers’ premises or in the uplink process to the satellite.” A “local taxing jurisdiction” is “any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States, with the authority to impose a tax or fee, but does not include a state.”

5. The sales price from sales of equipment by the Iowa state department of transportation is exempt from local option sales tax.

6. Certain construction-related equipment and other items are exempt.

The general application of this exception is as follows: The sales price from the sale of self-propelled building equipment, pile drivers, motorized scaffolding, or attachments that are customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts, and that are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures is exempt from local option sales tax. As of July 1, 2005, taxation of the above-mentioned machinery and equipment is removed from Iowa Code chapter 423 and thus is not subject to the local option sales tax. See 701—Chapter 241, division II, for an explanation of the new state excise tax imposed on sales of construction machinery and equipment.

The following definitions apply to this rule:

“Directly used” includes equipment used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. To determine if equipment is “directly used,” one must first ensure that the equipment is used during the specified activity and not before that process has begun or after it has ended. If the machinery or equipment is used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, to be “directly used,” it must constitute an integral and essential part of such activity as distinguished from a use in such an activity that is incidental, merely convenient, or is remote. The fact that the machinery or equipment is essential or necessary to new construction, reconstruction, alterations, expansion, or remodeling of real property or structures does not mean that it is also “directly used” in such an activity. Machinery or equipment may be necessary to one of the previously mentioned activities, but so remote from it that it is not directly used in the activity.

In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questionable is to the machinery or equipment whose direct use is not questionable, the more likely it is that the former is directly used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questionable. The closer in time the use, the more likely that the questionable machinery or equipment’s use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in the activities at issue.

“Equipment” means tangible personal property (other than a machine) directly and primarily used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Equipment” may be characterized as property which performs a specialized function, which, of itself, has no moving parts, or if it does possess moving parts, its source of power is external to it.

“Primarily used” includes machinery and equipment utilized in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. Machinery or equipment is “primarily used” in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures if more than 50 percent of the total time the machinery or equipment is used in the activity at issue (new construction, reconstruction, alterations, expansion, or remodeling of real property or structures). If a unit of machinery or equipment is used more than 50 percent of the time for the activity at issue and the balance of time for other business purposes, the exemption applies. If a unit of machinery or equipment is used 50 percent or more of the time for business purposes and not being used in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures, the exemption does not apply.

“Real property” includes the earth, the ground, a building, structure and other tangible personal property incorporated into the ground or a building that becomes a part of the ground, structure or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. *Mid-American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Instead, a building or structure that is affixed to the ground is considered to be real property. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. A test which can be applied to differentiate between equipment and real property is the following: If property is sold to a contractor, and the retailer would be required to consider the property “building material” and charge the contractor sales tax upon the purchase of this building material, then sale of the property is not exempt from local option tax.

“Replacement parts” means those parts essential to any repair or reconstruction necessary to self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of such equipment or equipment’s exempt use in new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. “Replacement parts” does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air-conditioning units, cabs, deluxe seats, and tools or utility boxes.

“Self-propelled building equipment” has the same meaning as that in 701—subrule 17.9(5), paragraph “c,” where the term is defined as an implement which is capable of movement from one place to another under its own power. “Self-propelled building equipment” includes, but is not limited to, skid-loaders, earthmovers and tractors.

Since the local option tax is imposed only on the same basis and not on any greater basis than the Iowa sales and service tax, local option tax is not imposed on any transactions subject to Iowa use tax, including use tax applicable to vehicles subject to registration or subject only to the issuance of a certificate of title. Also, exemptions which are applicable only to Iowa use tax cannot be claimed to exempt any transaction subject to local option sales tax. However, if a transaction involves the use of natural gas, natural gas service, electricity, or electric service, then local excise tax is imposed on the same basis as Iowa use tax under Iowa Code chapter 423. Local excise tax is to be collected and administered in the same manner as local option sales and service tax. Except as otherwise provided in this chapter, all rules governing local option sales and service tax also apply to local excise tax.

When tangible personal property is sold within a local option sales tax jurisdiction and the seller is obligated to transport it to a point outside Iowa or to transfer it to a common carrier or to the mails or parcel post for subsequent movement to a point outside Iowa, the sales price from the sale is exempt from local option sales tax provided the property is not returned to any point within Iowa except solely in the course of interstate commerce or transportation. (Iowa Code subsection 423.3(43)). Property sold in a local option sales tax jurisdiction for subsequent transport to a point outside the jurisdiction but otherwise within the borders of Iowa is not exempt from tax.

This rule is intended to implement 2005 Iowa Code Supplement sections 423B.5 and 423E.3.

701—107.10(422B) Local option sales and service tax payments to local governments. For periods after July 1, 1997, when a local sales and service tax is imposed, the director of revenue and finance within 15 days of the beginning of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the tax moneys each city or county will receive for the year and for each month of the year. For periods after July 1, 2002, the director of revenue and finance by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed an estimate of the tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months. The director shall remit 95 percent of the estimated monthly tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and the last day of each month thereafter. The director shall remit a final payment of the remainder of tax money due to the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the first payment of the new fiscal year shall be adjusted to reflect any overpayment. An adjustment for an overpayment which resulted in a previous year will be reflected beginning with the November payment. The shares are to be remitted to the board of supervisors if the tax is imposed in the unincorporated areas of the county, and to each city where the tax is imposed.

Each county's account is to be proportionately distributed to participating governments 75 percent on the basis of the most recent certified federal census population, and 25 percent on the basis of the sum of property tax dollars levied by participating boards of supervisors or by cities for the three years from July 1, 1982, through June 30, 1985.

"The most recent certified federal census" is the final count from the most recent decennial census conducted by the United States Department of Commerce, Bureau of the Census, as modified by subsequent certifications from the United States Bureau of the Census. If a subsequent certified census occurs which modifies the "most recent certified federal census" for a participating jurisdiction, then the formula set forth in this rule for computations for distribution of the tax shall reflect any population adjustments reported by the subsequent certified census.

The "sum of property tax dollars levied" by boards of supervisors or city councils for the three years from July 1, 1982, through June 30, 1985, is the amount obtained by using data from county tax rate reports and city tax rate reports compiled by the office of management.

Division of the amount from each county's account to be distributed is done with these steps.

1. The total amount in the county's account to be distributed is first divided into two parts. One part is equal to 75 percent of the total amount to be distributed. The second part is the remainder to be distributed.

2. The part comprised of 75 percent of the total receipts to be distributed is further divided into an amount for each participating city or unincorporated area. This division is based upon the most recent certified federal census population and any subsequent certified census. Population for each participating city and unincorporated area is determined separately and totaled. The population for each sales tax imposing city or unincorporated area is divided by the total population to produce a percentage for each city or the unincorporated area. The percentages are rounded to the nearest one-hundredth of a percent with the total of all percentages equal to 100 percent. Each government's percentage is multiplied by 75 percent of the sales tax receipts to be distributed. Distributions are to be rounded to the nearest cent.

There are two types of certified federal censuses. The first is the usual decennial census which is always conducted throughout the entire area of any county imposing a local option sales tax.

The second type of certified federal census is the "interim" or "subsequent" census which is conducted between decennial censuses. An interim or subsequent census is not necessarily conducted within an entire county but may be used to count increases or decreases in only one or some of the jurisdictions within that county, for instance, one particular municipality. If an interim census is conducted within only certain participating jurisdictions of a county where a local option sales tax is imposed, the changes in population which that census reflects must be included within both the numerator and the denominator of the fraction which is used to compute the participating jurisdiction's share of the revenue from the county's account which is based on county population. See 1996 O.A.G. 10-22-96 (Miller to Richards). See also Example 3 of this rule for a demonstration of how an interim census can affect a population distribution formula.